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Attorneys for New York Community Bank

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re

CARL RAY TWENTIER & PATRICIA K.
TWENTIER,

Debtor(s).

Chapter 11 Proceedings

Case No. 2:09-bk-23803-GBN

NEW YORK COMMUNITY BANK.

Movant.

V

CARL RAY TWENTIER & PATRICIA K.
TWENTIER.

Respondents.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY**

Subject Property: 2320 West Holly Street,
Phoenix AZ 85009

New York Community Bank, doing business as Amtrust Bank ("Bank"), moves for relief the automatic stay so that Bank may enforce its rights against certain real and personal property located at 2320 West Holly Street, Phoenix AZ 85009, more specifically described in loan documents (the "Holly Property").

1 **Brief Introduction**

2 Carl Ray Twentier and Patricia K. Twentier¹ (collectively, "Debtor" or "Twentiers")
3 borrowed \$435,000 from the Bank² ("Loan"). A Deed of Trust recorded against the Holly
4 Property secures the Loan. Copies of the loan documents evidencing the Loan are attached as
5 Exhibit "A." The Loan first went into default around November 2009. Bank is currently owed
6 \$248,380.90 in principal, plus accrued interest of \$6,675.23 as of 9/21/2010 (with a per diem of
7 \$51.75), and additional amounts for late fees, costs, and attorneys' fees. The Twentiers owe
8 \$8,457 in real property taxes on the Holly Property.

9 **Legal Standard**

10 Under 11 U.S.C. § 362(d)(1), relief from the automatic stay is granted for "cause,"
11 including lack of adequate protection of a lender's interest in its collateral. *See In re Tucson*
12 *Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990).

13 **The Bankruptcies**

14 The Twentiers have failed to create any realizable equity in their bankruptcy estate by
15 retaining possession of the Holly Property. The patterns of the Twentiers in this bankruptcy, and
16 the bankruptcies of their companies, prove that the Twentiers continue fail to plan for any type
17 of legitimate reorganization.

18 In this case, the Twentiers did not timely file monthly reports, and this Court expressed
19 its disappointment that the Twentiers failed to comply with a court order regarding monthly
20 reports. [Minute Entry, dated 6/16/2010, Docket No. 68]. The Twentiers have made no loan
21 payments since May 2010. The Holly Property has been vacant since April 2010. The Holly
22 Property is subject to real property taxes for 2010 in the amount of \$8,457 (which will be a
23 senior lien if not paid). Bank has tried to contact the Twentiers to discuss Debtor's intentions,
24 but the Twentiers do not respond.

25
26 ¹ The original co-borrower was Patricia Stevens, but upon information and belief, Patricia Stevens changed her
name to Patricia Twentier after she married Carl Twentier.

27 ² Bank is the successor in interest to the loans of Desert Hills Bank, the original lender under the Loan.

1 The Holly Property is the former location of Debtor's company, Products International
2 Company ("PIC"). PIC filed bankruptcy on February 15, 2008 (2-08-bk-01454). The Twentiers
3 owned 2/3 of the shares of PIC, and Mr. Twentier was the president of PIC. PIC was the tenant
4 at the Holly Property. In September 2008, Judge Curley found "cause" to appoint a trustee and
5 oust the Twentiers as the debtors-in-possession of PIC, stating that the Twentiers had (1)
6 engaged in self-dealing transactions; (2) grossly mismanaged PIC; (3) engaged in improper pre-
7 petition transfers in the amount of \$820,000; (4) failed to pay employee and corporate taxes; and
8 (5) committed an "egregious violation" of the fiduciary duty owed to PIC. [Memorandum
9 Decision on Debtor's Motion to Dismiss and Creditor's Request for Appointment of Trustee,
10 dated 9/2/2008, PIC Docket No. 92]

11 After the Trustee took control, PIC was making regular rental payments to the Twentiers,
12 the owners of the Holly Property. The Twentiers did not use the rental payments to pay the
13 Loan. On June 30, 2009, pursuant to its Assignment of Rents, Bank demanded rents from the
14 Twentiers and the Trustee. The Trustee was under the impression PIC was making payments
15 directly to Bank. After the Bank's demand, the Trustee began making direct payments to Bank
16 until the Trustee sold PIC around April 2010, at which time PIC vacated the Holly Property.

17 The Twentiers were also the owners of Maxart Animal Health, Inc. ("Maxart"), which
18 filed bankruptcy on February 1, 2008 (2-08-bk-00993), and Amkim, LLC ("Amkim"), which
19 filed bankruptcy on January 29, 2009 (2-09-bk-01587).

20 In the Maxart case, Bank obtained stay relief to enforce its security agreement for a
21 different loan secured by 2333 South Power Road, Mesa, Arizona 85208 (the "Power Road
22 Property"). Maxart and Amkim were the borrowers. Maxart failed to file a Chapter 11 plan or
23 disclosure statement, failed to make payments or reject its lease, and failed to pay the amounts
24 owed for Bank's debt. Maxart made no effort to sell the Power Road Property, to reorganize or
25 to repay creditors.

26 In the Amkim bankruptcy, Amkim permitted Maxart to continue to remain in possession
27 of the Power Road Property without making lease payments (Maxart leased the Power Road
28 Property from Amkim). After Bank obtained stay relief in the Maxart case as to the Power Road

1 Property, Amkim filed bankruptcy on January 29, 2009, the day before the trustee's sale was
2 scheduled for the Power Road Property. Because both Amkim and Maxart were borrowers,
3 Bank was forced to file a separate stay relief motion in the Amkim case and could not hold the
4 sale. In both the Maxart and Amkim cases, an order was entered for dismissal as a result of
5 delinquent monthly operating reports and failure to pay fees. [Order dated 7/7/2009, Maxart
6 Docket 134] The cases were reinstated, but the Twentiers' pattern of carelessness is clear.

7 **Conclusion**

8 The Twentiers' actions demonstrate their inability to reorganize; their propensity to create
9 considerable expenses for creditors; their improper accounting of funds; and their failure to file
10 timely monthly reports. The Twentiers have proposed no plan to bring the Loan current. These
11 facts prove that cause exists to lift the automatic stay under 11 U.S.C. § 362(d)(1).

12 The Bank has not initiated a trustee's sale of the Holly Property, so at the very least the
13 Twentiers will have an additional 90 days after the stay is lifted to work out a plan with the
14 Bank before a trustee's sale is held for the Holly Property. Accordingly, Bank prays for entry of
15 an order terminating the automatic stay to allow Bank to enforce any and all of its rights in the
16 Holly Property. A proposed form of order is attached as Exhibit "B."

17 Alternatively, Bank requests that this Court enter a modified stay relief order, which will
18 permit Bank to initiate the trustee's sale, but not hold the trustee's sale. This will permit Bank
19 to immediately hold the trustee's sale after the stay is fully lifted, rather than waiting an
20 additional 90 days. A proposed form of order modifying the stay is attached as Exhibit "C."

21 RESPECTFULLY SUBMITTED this 12th day of October, 2010.

22 **RYLEY CARLOCK & APPLEWHITE**

23 By /s/ Zachary L. LaPrade

24 John J. Fries

25 Zachary L. LaPrade

26 Attorneys for New York Community Bank

27

28

1 ORIGINAL electronically filed this 12th day of October, 2010, with:

2 U.S. Bankruptcy Court
3 District of Arizona
4 230 North First Avenue, Suite 101
Phoenix, Arizona 85003-1706

5 COPIES mailed this 12th day of October, 2010 to:

6 Office of the U.S. Trustee
Attn: Patty Chan
7 U.S. Bankruptcy Court
230 North First Avenue, Suite 204
8 Phoenix, Arizona 85003

9 Harold E. Campbell
10 Ryan Michael Hicks
Campbell & Coombs, P.C.
11 1811 South Alma School Road, Suite 225
Mesa, Arizona 85210
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13 Attorneys for the Debtors

14 Debtors' List of Creditors Holding
15 20 Largest Unsecured Claims Attached as Exhibit "1"

17 By: /s/ Joyce Gesick

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Exhibit 1

United States Bankruptcy Court
District of Arizona

In re **CARL RAY TWENTIER**
PATRICIA KAY TWENTIER

Case No. **2:09-bk-23803**
Chapter **11**

Debtor(s)

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
BofA MasterCard PO Box 17309 Baltimore, MD 21297	BofA MasterCard PO Box 17309 Baltimore, MD 21297	Credit Card		41,703.64
BofA Visa PO Box 60069 City of Industry, CA 91716	BofA Visa PO Box 60069 City of Industry, CA 91716	Credit Card		14,111.03
BURCH & CRACCHIOLO, P.A. P.O. BOX 16882 Phoenix, AZ 85001	BURCH & CRACCHIOLO, P.A. P.O. BOX 16882 Phoenix, AZ 85001	ATTORNEY FEES		22,989.62
Chase PO Box 7035 Phoenix, AZ 85062-8035	Chase PO Box 7035 Phoenix, AZ 85062-8035	HOUSE AND LAND: Location: 3422 E. FOX STREET, Mesa AZ		299,517.59 (500,000.00 secured) (231,509.40 senior lien)
Chase Master Card PO Box 9001074 Louisville, KY 40290	Chase Master Card PO Box 9001074 Louisville, KY 40290	Credit Card		7,416.05
Chase Visa PO Box 94014 Palatine, IL 60094	Chase Visa PO Box 94014 Palatine, IL 60094	Credit Card		17,045.00
Chase Visa PO Box 94014 Palatine, IL 60094	Chase Visa PO Box 94014 Palatine, IL 60094	Credit Card		8,547.07
Chase Visa PO Box 94014 Palatine, IL 60094	Chase Visa PO Box 94014 Palatine, IL 60094	Credit Card		23,190.68
Citibank AT&T PO Box 6415 The Lakes, NV 88901	Citibank AT&T PO Box 6415 The Lakes, NV 88901	Credit Card		25,081.07
Citibank MasterCard PO Box 6415 The Lakes, NV 83901	Citibank MasterCard PO Box 6415 The Lakes, NV 83901	Credit Card		19,071.58

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS
 (Continuation Sheet)

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
DAVID A. BIRDSELL 216 N. Center St. Mesa, AZ 85201	DAVID A. BIRDSELL 216 N. Center St. Mesa, AZ 85201	POSSIBLE LIABILITY FROM TRUSTEE FOR PRODUCTS INTERNATIONAL COMPNAY	Disputed	Unknown
Desert Hills Bank 3001 E. Camelback Rd. Phoenix, AZ 85216	Desert Hills Bank 3001 E. Camelback Rd. Phoenix, AZ 85216	PERSONAL GUARANTEE (SECURED BY THE ASSESTS OF MAXART ANIMAL HEALTH, INC. AND THE REAL ESTATE OF AMKIM, LLC)		1,270,440.51
Discover PO Box 30395 Salt Lake City, UT 84130	Discover PO Box 30395 Salt Lake City, UT 84130	Credit Card		12,620.26
INTERNAL REVENUE SERVICE P.O. BOX 21126 Philadelphia, PA 19114-0326	INTERNAL REVENUE SERVICE P.O. BOX 21126 Philadelphia, PA 19114-0326	941 TAXES		495,152.00
JOHN MICHAEL FERRING C/O THE PAYNE LAW OFFICE 3420 E. SHEA BLVD, STE 164 Phoenix, AZ 85028	JOHN MICHAEL FERRING C/O THE PAYNE LAW OFFICE 3420 E. SHEA BLVD, STE 164 Phoenix, AZ 85028	LAWSUIT	Disputed	Unknown
SCOTT DARGER C/O First American Title PO Box 52159 Phoenix, AZ 85072	SCOTT DARGER C/O First American Title PO Box 52159 Phoenix, AZ 85072	GUARANTY OF MAXART ANIMAL HEALTH, INC. AND AMKIM, LLC NOTES		252,541.00
THOM AND KRISTI MYERS Canyon State Servicing Company PO Box 10378 Phoenix, AZ 85064	THOM AND KRISTI MYERS Canyon State Servicing Company PO Box 10378 Phoenix, AZ 85064	GUARANTY OF MAXART ANIMAL HEALTH, INC. NOTE		657,719.26